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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Baldine-Brunel Paul

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EXAMINER

HUYNH, SON P

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PAPER NUMBER

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07/13/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/882,036	Applicant(s) PAUL ET AL.	
	Examiner SON P. HUYNH	Art Unit 2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 24-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 24-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 01/11/2010 has been entered.

Response to Arguments

2. Applicant's arguments with respect to claims 1-8, 24-34 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's argument response to rejection under 101 for claims 27-34 are not persuasive. According to MPEP 2111.01 and the memo signed by director David J. Kappos on 01/26/2010, when a claim is directed to computer readable media that cover signals per se, which the USPTO must reject under 35 U.S.C 101 as covering both non-statutory subject matter. In this case, the computer readable medium covers both transitory and non-transitory embodiments since the specification is silent or does not

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disclose the computer readable medium covers only non-transitory embodiments. It is suggested the claims may be amended to cover only statutory embodiments to avoid a rejection under 35 U.S.C 101 by adding the limitation "non-transitory" to the claims. For the reasons given above, rejection under 35 U.S.C 101 for claims 27-34 is sustained.

With respect to Applicant's argument that the specification provides support for the amendment at page 8, lines 14-20, which provide a non-limiting that "the priority level may be added to a video-coded frame after the frame is encoded." (page 12, paragraph 1).

The Examiner agrees that page 8, lines 14-20 describes "the priority level may be added to a video-coded frame after the frame is encoded." However, this limitation is described as "in other embodiments". Page 8, lines 14-20 (or nowhere in the specification) describes "wherein the additional high priority frames are low priority frames having a high priority level added after encoding."

It is further noted that each of dependent claims recites "encoding a plurality of frames as either high priority frames or low priority frames;" Thus, it appears that high priority level is already added when encoding so that the frame is identified as "high priority" or "low priority". The phrase "in other embodiments" in page 8, line 17 of the specification, appears to refers to embodiment where high priority and/or low priority is not added when encoding the frames.

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It is further noted that adding priority level to frame after encoding is well-known in the art. For example, Joseph (5,144,425) or Machida et al. (US 5,781,561: figures 3-4).

Claims 9-23 have been canceled.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 27-34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 27-34 are drawn to a computer readable medium that covers both transitory and non-transitory embodiments because the specification is silent or does not disclose the computer readable medium covers only non-transitory embodiment. According to MPEP 2111.01 and the memo signed by director David J. Kappos on 01/26/2010, when a claim is directed to computer readable media that cover signals per se, which the USPTO must reject under 35 U.S.C 101 as covering non-statutory subject matter. Applicant is suggested to amend the claim by adding the limitation "non-transitory" to the claims to avoid a rejection under 35 U.S.C 101.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 1-8, 24-42 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 1, 24, 27 and 35 contain subject matter "encoding a gradually increasing amount of additional low priority frames as high priority frames until less than the threshold amount of low priority frame are being lost, wherein the additional high priority frames are low priority frames having a high priority level added after encoding." which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification does not support "wherein the additional high priority frames are low priority frames having a high priority level added after encoding." is discussed in "response to arguments" above.

The specification neither support the limitation " encoding a gradually increasing amount of additional low priority frames as high priority frames until less than the threshold amount of low priority frame are being lost". Instead, the specification, figure 7 and page 11, lines 20-25, merely describes "if more than a threshold number of low priority frames have been lost (704), then an additional number of the frames may be encoded as high priority frames than is dictated by the transmission priority algorithm discussed above. These additional high priority frames may be encoded at a lower quality than is generally used for high priority frames."

Claims 7, 33, 41 contains subject matter "encoding a plurality of frames as either high priority frames or low priority frames..." and "encoding as high priority frames all video frames that are to be transmitted", which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification, in one embodiment (i.e. figure 7, page 11, lines 10-25) discloses "encoding a plurality of frames as either high priority frames or low priority frames", and in another embodiment (i.e., figure 6, page 10, line 28-page 11, line 9) describes "encoding as high priority frames all video frames that are to be transmitted". However, the specification does not describes these features are used together in one embodiment. It is further noted that two limitations "encoding...either high priority frame or low priority frames" and "encoding as high priority frame all video frames..." conflicts to each other.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-8, 24-42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 (lines 7-8), 24 (line 12), 27 (lines 8-9), 35 (lines 9-10), recite the limitation "the additional high priority frames". There are insufficient antecedent basis for these limitations in the claims.

Claim 7 recites the limitation "the coded frames" in line 4, "the frame", in lines 6,8. There are insufficient antecedent basis for these limitations in the claim.

Claim 24 recites the limitation "the algorithm" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Claims 33 and 41 recite the limitations "the coded frame" in line 4, "the frame" in lines 6,8. There are insufficient antecedent basis for these limitations in the claim.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Joseph (US 5,144,425) discloses encoding video frames and assigning priority levels after encoding for transmitting encoded frames over high priority channel and low priority channel (see include, but not limited to, figures 1-6, col. 2, lines 48-57).

Machida et al. (US 5,781,561) discloses encoding apparatus for hierarchically encoding image signal and decoding apparatus for decoding the image signal hierarchically encoded by the encoding apparatus.

Yamaguchi et al. (US 6,674,477) discloses method and apparatus for processing a data series including processing priority data.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON P. HUYNH whose telephone number is (571)272-7295. The examiner can normally be reached on 9:00 - 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son P Huynh/
Primary Examiner, Art Unit 2424

July 7, 2010